

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3178
Administrative Law Judge Division
September 7, 2006

R E S O L U T I O N

RESOLUTION ALJ 176-3178. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

The Categories

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

Mixed or Unclear Category Proceedings

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

ALJ/hl2

Next Steps

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

Conclusion

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

IT IS ORDERED that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on September 7, 2006, the following Commissioners voting favorably thereon:

/s/ STEVE LARSON

STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3178 (9/7/06)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A06-08-020 Southern California Edison Company, dba SCE, for Rehearing of Resolution E-3992.	Quasi-legislative	*	*
A06-08-021 MCINTYRE, TODD, NATIONAL COMTEL NETWORK, INC., Application for approval of change of control of National Comtel Network, Inc., (U5341C) to Todd McIntyre, an individual.	Ratesetting	Ratesetting	NO
A06-08-023 CAUSE BASED COMMERCE INC., dba THE SIENNA GROUP, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A06-08-024 HELEN M. UPTON, MARTIN L. GRIFFIN, NORTH VALLEY SHUTTLE, LLC, NORTH VALLEY SHUTTLE, LLC, for authority to operate as a scheduled Passenger Stage Corporation between the cities of Chico, Paradise, Oroville, Gridley, Marysville/Yuba City, and the Sacramento International Airport; and to establish a Zone of Rate Freedom.	Ratesetting	Ratesetting	NO
A06-08-025 SAN JOSE WATER COMPANY (U 168 W), for authorization to Issue and sell Debentures not exceeding the aggregate amount of Fifty Million Dollars (\$50,000,000.) and to execute and Deliver Loan Agreements.	Ratesetting	Ratesetting	NO
A06-08-026 SAN DIEGO GAS & ELECTRIC COMPANY (U902E), SOUTHERN CALIFORNIA EDISON COMPANY (U338E), SOUTHERN CALIFORNIA GAS COMPANY (U904G), for Approval of Changes to Natural Gas Operations and Service Offerings.	Ratesetting	Ratesetting	YES
A06-08-028 SFPP, L.P. (PLC-9 OIL), for authority, pursuant to Public Utilities Code Section 455.3, to increase rates for pipeline transportation services within California through implementation of an Ultra Low Sulfur Diesel Surcharge.	Ratesetting	Ratesetting	YES

* Application for Rehearing of Resolution is assigned to Legal Division. Categorization/Need for Hearing will be addressed as necessary if the Commission subsequently grants rehearing.

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3178 (9/7/06)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A06-08-029 VASKEN TOUTJIAN, for authority to operate as an on-call Passenger Stage Corporation between points within the Counties of Los Angeles, Orange, San Bernardino, Riverside, and certain parts of Ventura County, and the following Airports: Long Beach (LGB), Los Angeles (LAX), Orange County (SNA), Burbank (BUR), Ontario (ONT); and to establish a Zone of Rate Freedom.	Ratesetting	Ratesetting	NO
A06-08-030 TRANSPORTES EJECUTIVOS DE OCCIDENTE, INC., for authority to operate as a scheduled Passenger Stage Corporation between points in the Counties of Los Angeles and San Diego (cities of Los Angeles, Huntington Park, Santa Ana, and San Ysidro), between points in the Counties of Los Angeles and Kern (cities of Lamont, Bakersfield, Huron, Hanford, Delano, Pixley, Porterville, Lindsay, Visalia, Tulare, Goshen, Dinuba, Parlier, Selma, Fresno, Madera, Chowchilla, Merced, Livingston, Turlock, Atwater, Modesto, Stockton, Lodi, and Sacramento; and to	Ratesetting	Ratesetting	NO
A06-08-031 ALEMU, INC., dba BAY AREA AIRPORTER, for authority to operate as a Passenger Stage Corporation between points in the Counties of San Francisco, Alameda, Contra Costa, Santa Clara, Solano, Marin, and San Mateo, and the International Airports located in San Francisco, Oakland, and San Jose; and to establish a Zone of Rate Freedom.	Ratesetting	Ratesetting	NO
A06-08-032 CITY OF TORRANCE, for Authority to construct a grade-separated crossing of Del Amo Boulevard over the Harbor Subdivision tracks of the Burlington Northern Santa Fe - LACMTA in the City of Torrance, California.	Ratesetting	Ratesetting	NO
A06-09-001 Southern California Edison Company, dba SCE, Requesting Authority to Maintain Current ERRA Rates Under the ERRA Trigger Mechanism until January 1, 2007.	Ratesetting	Ratesetting	NO
A06-09-002 SNET AMERICA, INC., dba AT&T LONG DISTANCE EAST, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3178 (9/7/06)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A06-09-003 PACIFICORP (U 901 E), for Approval of the sale of Upper Beaver Hydroelectric Project to the City of Beaver, Utah.	Ratesetting	Ratesetting	NO
A06-09-004 SMART CHOICE COMMUNICATIONS, LLC, for a Certificate of Public Convenience and Necessity to provide Non Facilities- Based Local Exchange and Interexchange Services within the State of California.	Ratesetting	Ratesetting	NO
A06-09-005 CITY OF FILLMORE, for Authority to construct a new public street and bike path across a track if the Ventura County Transportation Commission (VCTC) - Santa Paula Branch Line in the City of Fillmore, County of Ventura, California.	Ratesetting	Ratesetting	NO